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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/720,491

11/24/2003

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RPS920030191US1

4559

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10/11/2006

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EXAMINER

TRUONG, CAM Y T

ART UNIT

PAPER NUMBER

2162

DATE MAILED: 10/11/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/720,491

Applicant(s)

CHILDS ET AL.

Examiner

Cam Y T. Truong

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 10 July 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-19 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 13-19 is/are allowed.
- 6) ☒ Claim(s) 1-12 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 24 November 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

1. Claims 1-19 are pending in this Office Action.

Response to Arguments

2. Applicant's arguments filed 7/10/2006 have been fully considered but they are not persuasive.

Firstly, Applicant argued that the combination of Midgley and Maffezzoni does not teach the claimed limitation "storing backup files in a locked partition of a storage device".

In response to applicant argument, Midgley teaches a data structure 54 in the cache 16 of backup server 12 comprises a structure of directories, subdirectories, and files. The above information shows that backup files are stored in directories. The directories indicates at least three directories. Each directory is represented as a partition of the backup server 12 (fig. 2, col. 9, lines 55-67; col. 10, lines 5-40).

Midgley does not explicitly "a locked partition".

Maffezzoni teaches copying locked system files from a first drive of a computer system to a second drive (col.3, lines 20-23). The above information system files is stored in a system that is locked.

As discussed above the combination of Midgley and Maffezzoni teaches the above claimed limitation.

Secondly, Applicant argued that Midgley does not teach "reading other partitions of said storage device to determine which files have been modified since most recent backup operation".

Midgley teaches maintains a plurality of versions of the replicated data structure 54. Each of the replicated versions, 58a, 58b and 58c are representative of versions of the replicated data structure 54 at different points in time. Files are stored in directories of the data structure 54. Thus, to maintains a plurality of versions of the data structure 54, files that are stored in the second and third directories are read to determine files have been modified since most recent backup operation. The second and third directories are presented as other partitions (fig. 2, col. 25-40).

Thirdly, Applicant argued that Examiner has not presented a prima facie case of obviousness in rejection claims 1 and 7.

In response to applicant's argument, the examiner respectfully submits that to establish a prima facie case of obviousness under 35 USC 103, references must provide motivation or suggestion either in the references themselves, or in the knowledge generally available to one of ordinary skill in the art; must be analogous; and must teach all the claimed limitations.

In this case, the instant application is concerned to restoring backup data, update backup files and scanning virus on files.

The examiner respectfully agrees with the applicant that Midgley is directed to synchronization replication process that replicates selected source data file data stored on the network.

However, as discussed in the office action, Midgley provides another aspect of a system and method for storing backup files on a data structure of a backup server 12, restoring a version of a target data file and maintaining files stored in a data structure of a backup server (fig. 2, col. 10, lines 10-20; col. 6, lines 28-30; col.10, lines 25-35).

Similarly, Maffezzoni is related to a system for backup and restoring files (col. 2, lines 19-30).

Importantly, Maffezzoni provides an advantage of locked system files from a first drive of a computer system to a second drive; during the initial backup to the peripheral storage device, the data is first passed through an anti-virus module 330 to prevent copying of infected items. Once the virus scan has been completed, the information is verified before being transferred to the peripheral storage device media. (col.3, lines 20-23; col. 12, lines 39-43; col. 17, lines 12-17).

As discussed above, a person of an ordinary skill in the art at the time the invention was made would recognize the advantage of Maffezzoni to add the Maffezzoni's teaching of during the initial backup to the peripheral storage device, the data is first passed through an anti-virus module 330 to prevent copying of infected items. Once the virus scan has been completed, the information is verified before being transferred to the peripheral storage device media to Midgley's system in order to protect maintaining files correctly by preventing copying of virus files into any computer

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systems or disinfecting detected viruses prior to performing any copying operations and further preventing multiple users modify files at the same time.

For the above reason, the 103 rejection for claims 1 and 7 is proper and make the record clear.

Fourthly, Applicant argued that Midgley does not explicitly teach the claimed limitation "copying uncorrupted modified files".

In response to applicant's argument, Midgley teaches monitoring and capturing changes to the source data files, recording the changes to each journal file and transferring or copying the journal files to the backup server so that the captured changes are written to the appropriates ones of the target data files. The source data files are represented as the source data files (col. 2, lines 15-30).

Fifthly, Applicant argued that Midgley does not explicitly teach the claimed limitation "replacing backup files in said locked partition of said storage device that have been modified since most recent backup operation with said uncorrupted modified files".

In response to applicant's argument, Midgley teaches monitoring and capturing changes to the source data files, recording the changes to each journal file and transferring or copying the journal files to the backup server so that the captured changes are written to the appropriates ones of the target data files (col. 2, lines 15-30).

Sixthly, Applicant argued that Midgley does not explicitly teach the claimed limitation "downloading an updated virus template into a locked partition of the storage device if a virus template needed to be updated". Thus the examiner has not presented a prima facie case of obviousness in rejecting claims 4, 10 and 16.

In response to applicant argument, the combination of Midgley and Maffezzoni provides an advantage of locked system files from a first drive of a computer system to a second drive (Maffezzoni, col.3, lines 20-23).

The combination of Midgley and Maffezzoni does not explicitly teach the claimed limitation "downloading an updated virus template into a locked partition of the storage device if a virus template needed to be updated". Pak teaches the computer virus data files must be periodically updated with new computer virus definitions and code to enable the anti-virus engine 17 to continue to provide up-to-date anti-virus protection. Thus, the server 11 includes an anti-virus (AV) compiler 16 that executes an updating service. The client 12 can connect to the server 11 and download updated external virus definition files from the anti-virus compiler 16 for subsequent incorporation into a structured virus database (paragraph [0064]). The virus definition files is represented as an updated virus template.

As discussed above, a person of an ordinary skill in the art at the time the invention was made would recognize the advantage of apply Pak's teaching of downloading updated external virus definition files to Midgley's system in order to provide a flexible and extensible anti-virus solution and further detect new virus for protecting files.

Seventhly, Applicant argued that Midgley does not teach "copying modified files with a detected virus but cleaned by the virus scan".

Pak teaches the anti-virus engine 17 scans and cleans files and attachments stored in the client storage 15 (paragraph [0066], lines 9-10).

It would have been obvious to a person of an ordinary skill in the art at the time the invention was made to apply Pak's teaching of the anti-virus engine 17 scans and cleans files and attachments stored in the client storage to Midgley's system in order to protect files for future processing.

Finally, applicant argued that the combination of prior arts does not teach claims 3-6, 8-12. Examiner has not presented a prima case of obviousness for rejecting these claims and there is no motivation to combine these references.

In response to the applicant argument,

As to claims 3 and 9, Midgley does not explicitly teach the claimed limitation "destroying modified files containing a virus that cannot be uncorrupted".

Bucher teaches in the event of the detection of a virus, the scrubber module 280 is configured to delete the data that has been corrupted within the storage device of the corresponding computer 220, 225, or 230, which can be as much as all of the data in the storage device, including software and content (e.g., data files, documents, etc.). Deleting the data in this manner has the dual effect of eliminating the corrupted data and eliminating any copy of the virus in the storage device, thereby preventing further propagation of the virus in the network (paragraph [0035], lines 1-8).

It would have been obvious to a person of an ordinary skill in the art at the time the invention was made to apply Bucher's teaching of deleting files that contain virus to Midgley's system in order to eliminate the corrupted data and eliminating any copy of the virus in the storage device, thereby preventing further propagation of the virus in the network.

As to claims 4 and 10, Midgley does not explicitly teach the claimed limitation "downloading an updated virus template into said locked partition of said storage device if a virus template needed to be updated".

Pak teaches the computer virus data files must be periodically updated with new computer virus definitions and code to enable the anti-virus engine 17 to continue to provide up-to-date anti-virus protection. Thus, the server 11 includes an anti-virus (AV) compiler 16 that executes an updating service. The client 12 can connect to the server 11 and download updated external virus definition files from the anti-virus compiler 16 for subsequent incorporation into a structured virus database (paragraph [0064]).

It would have been obvious to a person of an ordinary skill in the art at the time the invention was made to apply Pak's teaching of downloading updated external virus definition files to Midgley's system in order to provide a flexible and extensible anti-virus solution and further detect new virus for protecting files.

As to claims 5 and 11, Midgley teaches the claimed limitation "copying modified files with no detected viruses" as monitoring and capturing changes to the source data

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files, recording the changes to each journal file and transferring or copying the journal files to the backup server so that the captured changes are written to the appropriate ones of the target data files. The source data files are represented as the source data files (col. 2, lines 15-30);

“copying modified files” as (col. 2, lines 15-30).

Midgley does not explicitly teach the claimed limitation “with a detected virus but cleaned by said virus scan”.

Pak teaches the anti-virus engine 17 scans and cleans files and attachments stored in the client storage 15 (paragraph [0066], lines 9-10).

It would have been obvious to a person of an ordinary skill in the art at the time the invention was made to apply Pak's teaching of the anti-virus engine 17 scans and cleans files and attachments stored in the client storage to Midgley's system in order to protect files for future processing.

As to claims 6 and 12, Midgley does not explicitly teach the claimed limitations: “running said virus scan on files to be backed up prior to storing said backup files in said locked partition of said storage device; and uncorrupting said files to be backed up containing a virus that can be uncorrupted prior to storing said backup files in said locked partition of said storage device; wherein said backup files that are stored in said locked partition of said storage device are said files to be backed up with no detected virus and said files to be backed up with a detected virus but cleaned by said virus scan”.

However, Midgley teaches storing files in backup server with no detected virus (col. 2, lines 32-35).

Maffezzoni teaches copying locked system files from a first drive of a computer system to a second drive (col.3, lines 20-23).

Pak teaches the anti-virus engine 17 scans and cleans files and attachments stored in the client storage 15 (paragraph [0066], lines 9-10).

Bucher teaches a copy of data is sent to a network appliance, which analyzes whether it contains a virus (paragraph [0009]).

It would have been obvious to a person of an ordinary skill in the art at the time the invention was made to apply Maffezzoni's teaching copying locked system files from a first drive of a computer system to a second drive, Pak's teaching the anti-virus engine 17 scans and cleans files and attachments stored in the client storage and Bucher's teaching of a copy of data is sent to a network appliance which analyzes whether it contains a virus to Midgley's system in order to eliminate the corrupted data and eliminating any copy of the virus in the storage device, thereby preventing further propagation of the virus in the network and further to prevent copying of infected files and prevent their access to protect the user from inadvertent deletion or alteration of files.

For the above reason, the 103 rejection for claims is proper and make the record clear.

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 1-2, 7-8 are rejected under 35 U.S.C. 103(a) as being unpatentable over Midgley et al (or hereinafter "Midgley") (US 6625623) in view of Maffezzoni (US 6385707).

As to claims 1 and 7, Midgley teaches a method for restoring previously un-backed up data during a system restore (col. 2, lines 15-30):

"storing backup files in a locked partition of a storage device" as a data structure 54 in the cache 16 of backup server 12 comprises a structure of directories, subdirectories, and files. The above information shows that backup files are stored in directories. The directories indicates at least three directories. Each directory is represented as a partition of the backup server 12 (fig. 2, col. 9, lines 55-67; col. 10, lines 5-40).

"starting restoration of said system" as restore a version of a target data file (col. 6, lines 25-30);

"reading other partitions of said storage device to determine which files have been modified since most recent backup operation" as maintains a plurality of versions of the replicated data structure 54. Each of the replicated versions, 58a, 58b and 58c

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are representative of versions of the replicated data structure 54 at different points in time. Files are stored in directories of the data structure 54. Thus, to maintain a plurality of versions of the data structure 54, files that are stored in the second and third directories are read to determine files have been modified since most recent backup operation. The second and third directories are presented as other partitions (fig. 2, col. 25-40).

"copying uncorrupted modified files" as monitoring and capturing changes to the source data files, recording the changes to each journal file and transferring or copying the journal files to the backup server so that the captured changes are written to the appropriate ones of the target data files. The source data files are represented as the source data files (col. 2, lines 15-30);

"replacing backup files in said locked partition of said storage device that have been modified since most recent backup operation with said uncorrupted modified files" as monitoring and capturing changes to the source data files, recording the changes to each journal file and transferring or copying the journal files to the backup server so that the captured changes are written to the appropriate ones of the target data files (col. 2, lines 15-30).

Midgley does not explicitly teach the claimed limitations "a locked partition of said storage device; running a virus scan on files determined to be modified; uncorrupting modified files containing a virus that can be uncorrupted".

Maffezzoni teaches the claimed limitations:

“a locked partition of said storage device” as copying locked system files from a first drive of a computer system to a second drive (col.3, lines 20-23);

“running a virus scan on files determined to be modified” as the backup restore engine is also charged with performing virus checking on all files before the copying is performed. In this manner, any detected viruses are disinfected prior to performing any copying operations. The above information means running a virus scan on all files (col. 12, lines 39-43);

“uncorrupting modified files containing a virus that can be uncorrupted” as during the initial backup to the peripheral storage device, the data is first passed through an anti-virus module 330 to prevent copying of infected items. Once the virus scan has been completed, the information is verified before being transferred to the peripheral storage device media. The above information shows that the files contains virus, however, they are not corrupted (col. 17, lines 12-17).

It would have been obvious to a person of an ordinary skill in the art at the time the invention was made to apply Maffezzoni's teaching of copying locked system files from a first drive of a computer system to a second drive; performing virus checking on all files before the copying is performed; during the initial backup to the peripheral storage device, the data is first passed through an anti-virus module 330 to prevent copying of infected items to Midgley's system in order to protect maintaining files correctly by preventing copying of virus files into any computer systems or disinfecting detected viruses prior to performing any copying operations(col. 2, lines 40-43) and further preventing multiple users modify files at the same time.

As to claims 2 and 8, Midgley teaches "restoring files of said system with said backup files stored in said locked partition of said storage device" as restoring versions of target source files that are not stored in said locked partition of a backup server (col. 18, lines 49-50).

Midgley does not explicitly teach the claimed limitation "in said locked partition of said storage device".

Maffezzoni teaches "a locked partition of said storage device" as copying locked system files from a first drive of a computer system to a second drive (col.3, lines 20-23);

It would have been obvious to a person of an ordinary skill in the art at the time the invention was made to apply Maffezzoni's teaching of copying locked system files from a first drive of a computer system to a second drive to Midgley's system in order to prevent their access to protect the user from inadvertent deletion or alteration of files.

5. Claims 3, 9 are rejected under 35 U.S.C. 103(a) as being unpatentable over Midgley et al (or hereinafter "Midgley") (US 6625623) in view of Maffezzoni (US 6385707) and further in view of Bucher (US 2005/0055559).

As to claims 3 and 9, Midgley does not explicitly teach the claimed limitation "destroying modified files containing a virus that cannot be uncorrupted".

Bucher teaches in the event of the detection of a virus, the scrubber module 280 is configured to delete the data that has been corrupted within the storage device

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of the corresponding computer 220, 225, or 230, which can be as much as all of the data in the storage device, including software and content (e.g., data files, documents, etc.). Deleting the data in this manner has the dual effect of eliminating the corrupted data and eliminating any copy of the virus in the storage device, thereby preventing further propagation of the virus in the network (paragraph [0035], lines 1-8).

It would have been obvious to a person of an ordinary skill in the art at the time the invention was made to apply Bucher's teaching of deleting files that contain virus to Midgley's system in order to eliminate the corrupted data and eliminating any copy of the virus in the storage device, thereby preventing further propagation of the virus in the network.

6. Claims 4, 5, 10, 11 are rejected under 35 U.S.C. 103(a) as being unpatentable over Midgley et al (or hereinafter "Midgley") (US 6625623) in view of Maffezzoni (US 6385707) and further in view of Pak et al (or hereinafter "Pak") (US 2003/0033536).

As to claims 4 and 10, Midgley does not explicitly teach the claimed limitation "downloading an updated virus template into said locked partition of said storage device if a virus template needed to be updated".

Pak teaches the computer virus data files must be periodically updated with new computer virus definitions and code to enable the anti-virus engine 17 to continue to provide up-to-date anti-virus protection. Thus, the server 11 includes an anti-virus (AV) compiler 16 that executes an updating service. The client 12 can connect to the server

11 and download updated external virus definition files from the anti-virus compiler 16 for subsequent incorporation into a structured virus database (paragraph [0064]).

It would have been obvious to a person of an ordinary skill in the art at the time the invention was made to apply Pak's teaching of downloading updated external virus definition files to Midgley's system in order to provide a flexible and extensible anti-virus solution and further detect new virus for protecting files.

As to claims 5 and 11, Midgley teaches the claimed limitation "copying modified files with no detected viruses" as monitoring and capturing changes to the source data files, recording the changes to each journal file and transferring or copying the journal files to the backup server so that the captured changes are written to the appropriate ones of the target data files. The source data files are represented as the source data files (col. 2, lines 15-30);

"copying modified files" as (col. 2, lines 15-30).

Midgley does not explicitly teach the claimed limitation "with a detected virus but cleaned by said virus scan".

Pak teaches the anti-virus engine 17 scans and cleans files and attachments stored in the client storage 15 (paragraph [0066], lines 9-10).

It would have been obvious to a person of an ordinary skill in the art at the time the invention was made to apply Pak's teaching of the anti-virus engine 17 scans and cleans files and attachments stored in the client storage to Midgley's system in order to protect files for future processing.

7. Claims 6, 12 are rejected under 35 U.S.C. 103(a) as being unpatentable over Midgley et al (or hereinafter "Midgley") (US 6625623) in view of Maffezzoni (US 6385707) and further in view of Pak et al (or hereinafter "Pak") (US 2003/0033536) and Bucher.

As to claims 6 and 12, Midgley does not explicitly teach the claimed limitations: "running said virus scan on files to be backed up prior to storing said backup files in said locked partition of said storage device; and uncorrupting said files to be backed up containing a virus that can be uncorrupted prior to storing said backup files in said locked partition of said storage device; wherein said backup files that are stored in said locked partition of said storage device are said files to be backed up with no detected virus and said files to be backed up with a detected virus but cleaned by said virus scan".

However, Midgley teaches storing files in backup server with no detected virus (col. 2, lines 32-35).

Maffezzoni teaches copying locked system files from a first drive of a computer system to a second drive (col.3, lines 20-23).

Pak teaches the anti-virus engine 17 scans and cleans files and attachments stored in the client storage 15 (paragraph [0066], lines 9-10).

Bucher teaches a copy of data is sent to a network appliance, which analyzes whether it contains a virus (paragraph [0009]).

It would have been obvious to a person of an ordinary skill in the art at the time the invention was made to apply Maffezzoni's teaching copying locked system files from a first drive of a computer system to a second drive, Pak's teaching the anti-virus engine 17 scans and cleans files and attachments stored in the client storage and Bucher's teaching of a copy of data is sent to a network appliance which analyzes whether it contains a virus to Midgley's system in order to eliminate the corrupted data and eliminating any copy of the virus in the storage device, thereby preventing further propagation of the virus in the network and further to prevent copying of infected files and prevent their access to protect the user from inadvertent deletion or alteration of files.

Allowable Subject Matter

8. Claims 13-19 are allowed.

Conclusion

9. THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

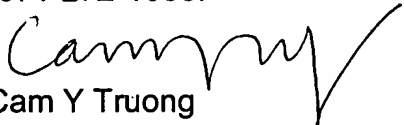
A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

Contact Information

10. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Cam Y T. Truong whose telephone number is (571) 272-4042. The examiner can normally be reached on Monday to Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John Breene can be reached on (571) 272-4107. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.


Cam Y Truong
Primary Examiner
Art Unit 2162
9/29/2006